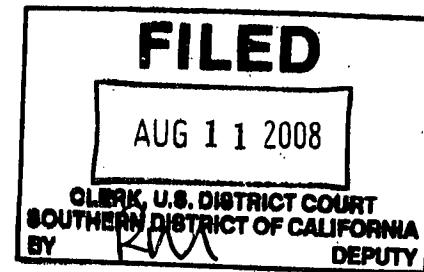


Phillip W. Dunn, Document 1450 Filed 08/11/2008
CSATP & STATE PRISON

1 P. O. Box 5248
2 CONCORD, CA 94212
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4



1 STATEMENT IN SUPPORT OF CASE FACTS.

2 The Issue before the court deals with a couple of key issues.
 3 ISSUES I Believe HAVE NOT BEEN HEARD OR RULED ON. The AG
 4 STATES THAT I HAVE RUN OUT OF TIME. THAT THE WRIT
 5 BEFORE YOU IS UNTIMELY AND NOT RETRO ACTIVE. YET CUNNINGHAM
 6 WAS GIVEN RELIEF AFTER FOURTEEN (14) YEARS.

7 JUST BECAUSE THE EXACT WORD RETRO ACTIVE DID NOT APPEAR
 8 IN THE UNITED STATES SUPREME COURT RULING DOES NOT MEAN THE
 9 SPIRIT OF THE LAW WAS LACKING IN IT'S ATTEMPT TO BRING THE
 10 UNCONSTITUTIONAL SENTENCING PRACTICES USED IN THE CALIFORNIA
 11 COURTS TO BEAR.

12 WHEN I MADE THE INITIAL FILING OF THIS WRIT IN THE SUPERIOR
 13 COURT OF SANDIEGO. NO MENTION WAS MADE OF TIME LIMITATIONS
 14 OR FINAL JUDGEMENTS, BECAUSE THAT COURT KNEW PRISONERS WOULD
 15 BE SEEKING RELIEF UNDER THE NEW RULING.

16 THE AG'S COMMENT ABOUT THE Muddled PORTION OF THAT RESPONSE,
 17 I FOUND QUITE CLEAR. IT STATED THAT ALL THE BOOKER, BLAKE
 18 APPRENTICE, AND HOW CUNNINGHAM HAD BEEN DECIDED, IT DID NOT APPLY
 19 TO ME. I APPEALED THAT DECISION THRU ALL THE LEVELS OF THE CALIFORNIA
 20 COURT SYSTEM AND STILL A MAJOR PORTION OF THAT WRIT HAS GONE
 21 UNANSWERED.

22 CUNNINGHAM V. CALIFORNIA STATES THAT THE "DUAL USAGE" OF A PRIOR
 23 IS AN UNCONSTITUTIONAL PRACTICE! YET CALIFORNIA INSISTS THE SUPREME
 24 COURT IS WRONG! IN MY WRIT TO THE SANDIEGO SUPERIOR COURT, I MADE
 25 A CLAIM THAT TO DATE HAS GONE UNCHALLENGED.

26 THE KIDNAPPING CASE AS BEING A DIRECT VIOLATION OF SENTENCING AS
 27 DESCRIBED IN CUNNINGHAM AS WELL AS ROMERO. I HAVE Sought OUT THE
 28 CLERK OF THE COURT IN SANDIEGO, TO PROVIDE ME WITH AN ABSTRACT

2.

08-CV-0485

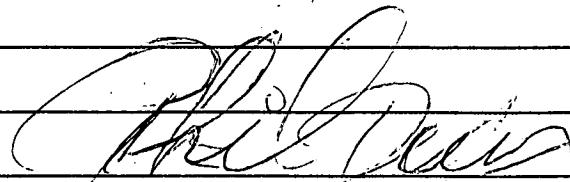
3.

08-CV-0485

1 The Cunningham decision was made last year. I filed with
 2 what has to date gone unanswered by all but the lower court and
 3 its decision did not include an answer to the prima facie pleading
 4 of the writ. I would ask the court not to dismiss the pleading
 5 but to see it for what it is an illegal sentence stacked
 6 on top of an illegal sentence. It is for this reason I seek relief
 7 and none other. While California fears litigation from
 8 prisoners freed under these new cases. It should be no
 9 reason to deny me the ruling I seek. The AG has made no
 10 new statements. He has not proved that the recent Cunningham
 11 case is not retroactive and just because the kidnapping was
 12 in 1993 does not mean it is not currently effecting me on this
 13 commitment term. If looked at thru the glass I have been
 14 given eighteen (18) years for a charge I should have had the middle
 15 term for. The dual usage and the kidnapping are both
 16 unconstitutional sentencing practices!

17
18
19
20 Respectfully Submitted

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28



Phillip Davis

Litigant pro se

T-799-1

ASU-1204

DATE: 8-7-08

08-CV-0485

ABSTRACT OF JUDGMENT - PRISON COMMITMENT - DETERMINATE

SINGLE, CONCURRENT, OR FULL-TERM CONSECUTIVE COUNT FORM

[Not to be used for multiple count convictions or for 1/3 consecutive sentences.]

CR-290.1

<input checked="" type="checkbox"/> SUPERIOR	COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		DOB: 02-04-60	CASE NUMBER SCE221319	
<input type="checkbox"/> MUNICIPAL	BRANCH OR JUDICIAL DISTRICT EL CAJON				
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: PHILLIP WAYNE DUNN					
AKA:					
CII#: 06262508 BOOKING #: 02117345			<input type="checkbox"/> NOT PRESENT		
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT			<input type="checkbox"/> AMENDED ABSTRACT		
DATE OF HEARING 02-03-03		DEPT. NO. 11	JUDGE HERBERT J. EXARHOS		
CLERK A. NARDUCCI		REPORTER TAMMY NIELSEN, CSR #9143	PROBATION NO. OR PROBATION OFFICER IMMEDIATE SENTENCING		
COUNSEL FOR PEOPLE MICHAEL PRZYTULSKI			COUNSEL FOR DEFENDANT JACKIE CROWLE, ALTERNATE PUBLIC DEFENDER		
			<input checked="" type="checkbox"/> APPTD.		

1. Defendant was convicted of the commission of the following felony:

CNT.	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			TIME IMPOSED		
						JURY	COURT	PLEA	TERM (MOS.)	YRS.	MOS.
1	PC	459*/460/667.5(c)(21)	Residential Burglary 1st Degree	2002	02-03-03			X	M.	8	0

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTION OR PRISON TERMS (mainly in the PC 667 series).

List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
PC 667(c)(21)	5							5 0

4. Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).

5. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

- RESTITUTION FINE of: \$500.00 per PC 1202.4(b) forthwith per PC 2085.5.
- RESTITUTION FINE of: \$500.00 per PC 1202.45 suspended unless parole is revoked.
- RESTITUTION of: \$TBD per PC 1202.4(f) to victim(s) Restitution Fund

(*List victim name(s) if known and amount breakdown in item 7, below.)

(1) Amount to be determined. (2) Interest rate of: % (not to exceed 10% per PC 1202.4(f)(3)(F)).d. LAB FEE of: \$ for counts: per H&SC 11372.5(a).e. DRUG PROGRAM FEE of \$150 per H&SC 11372.7(a). f. FINE of: \$ per PC 1202.5.6. TESTING: AIDS DNA pursuant to PC 1202.1 PC 290.2 other (specify): PC 296

7. Other orders (specify): PROBATION TO SUBMIT POST-SENTENCE REPORT DIRECTLY TO THE D. O. C. PER PC 1203c RE: CREDITS AND RESTITUTION. PC 667(a)(1) shall run consecutively to Count 1.

3. TOTAL TIME IMPOSED:

13 0

4. This sentence is to run concurrent with (specify):

5. Execution of sentence imposed

- at initial sentencing hearing.
- at resentenceing per decision on appeal.
- after revocation of probation.
- at resentencing per recall of commitment. (PC 1170(d).)
- other (specify):

1. DATE SENTENCE PROUNOUNCED
02-03-04 CREDIT FOR
TIME SPENT
IN CUSTODY TOTAL DAYS: ACTUAL LOCAL
TIME 15/1 LOCAL CONDUCT
CREDITS 5 4019 SERVED TIME IN STATE INSTITUTION
INCLUDING: TBD 2933.1 DMH CDC CRC2. The defendant is remanded to the custody of the sheriff forthwith after 48 hours excluding Saturdays, Sundays, and holidays. To be delivered to the reception center designated by the director of the California Department of Corrections. other (specify):

LERK OF THE COURT: I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE

J. STURGEON

DATE

02-04-03

his form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

PROOF OF SERVICE BY MAIL

I declare that:

I am (resident of / employed in) the county of Kings California. I am over the age of eighteen years, my business / residence address is:

Phillip W. Dunn, T-79951, ASU-126
CSATF + STATE Prison, P.O. Box 5248, Concoran, CA
93212

On Thursday, August 7, 2008, I served the attached

Motion in Response to the Attorney General's motion to Dismiss motion for appointment of Council

on the 7th of August 2008 in said case, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully paid, in the United States mail at CSATF + STATE Prison addressed as follows

(1) Clerk of the court in the United States District Court for the Southern District California
880 Front Street SAN Diego, CA 92101 And in another mailing Mr. K. VIENNA, Deputy Attorney
General, Office of the Attorney General 110 West 4th Street, Suite 1100
(2) SAN Diego, CA 92101

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on (date) August 7th, 2008, at Concoran California.

Type or print name Phillip W. Dunn, Petitioner pro se

Signature Phillip W. Dunn